

REMARKS

The March 14, 2003 Official Action has been carefully considered. In view of the amendments presented herewith and these remarks, favorable reconsideration and allowance of this application are respectfully requested.

At the outset, it is noted that a shortened statutory response period of three months was set in the March 14, 2003 Official Action. Accordingly, the initial response period expired June 14, 2003. A petition for a two-month extension of the response period is presented with this Amendment and Request for Reconsideration, which is being filed before expiration of the two-month extension period.

As another preliminary matter, the Examiner has refused applicants' request to rejoin Claims 13 and 14 with the subject matter of claims 1, 5-7, 11-14, 19 and 34 for examination in this application. Accordingly, Claims 13 and 14 remain withdrawn from consideration, as allegedly being drawn to a non-elected invention.

In the March 14, 2003 Official Action, Claim 19 stands rejected as allegedly failing to satisfy the enablement requirement of 35 U.S.C. §112, first paragraph. This ground of rejection is rendered moot in view of the cancellation of Claim 19 in accordance with this amendment.

The pending claims are deemed objectionable by the Examiner due to non-compliance with the requirements of 37 C.F.R. §§1.821-1.825. The Examiner points out in this connection that amending the claims by referring to SEQ ID NOs would obviate this objection. The claims have been amended as suggested by the Examiner. This ground of rejection should, therefore, be withdrawn.

The only other matter remaining to be addressed in the March 14, 2003 Official Action is the 35 U.S.C. §102(b) rejection of Claims 1, 5-7, 11, 12 and 34 as allegedly anticipated by the disclosure of WO 89/01041. In view of the present claim amendments, this ground of rejection is respectfully traversed.

As now amended, Claim 1 calls for a peptide which is a fragment of a polypeptide of the CD55 family or a derivative thereof, the fragment being of at least 7 contiguous amino acids but fewer than 30 amino acids, from SEQ ID NO: 2. Support for this amendment is provided in the present specification at page 13, lines 20-27. The disclosure at page 13 of a range of fragment lengths encompassing the range recited in Claim 1, as now amended, provides sufficient support for the lesser included range. Cf. In re Blaser, 194 USPQ 122 (CCPA 1977) (Disclosure of temperature range of 60°C to 200°C was found to provide support for claimed range of 80°C to 200°C).

It is noted that at page 7 of WO 89/01041 there is mention of deletions. The passage referred to is concerned with small deletions of 1-10 amino acids. There is also a reference in WO 89/01041 to [des Cys 330-Thr 347] mature mDAF, which is a deletion of 18 amino acids, leaving a 329 amino acid polypeptide. Disclosure of this nature clearly fails to anticipate Claim 1 as now amended. As noted in In re Arkley, 172 USPQ 524 (CCPA 1972), a rejection under 35 U.S.C. §102 is proper only when the claimed subject matter is identically disclosed or described in the allegedly anticipating prior art reference.

The amino acid sequences remaining after the deletions suggested by WO 89/01041 are substantially longer than the fragments called for in applicants' claims. Thus, when viewed objectively, WO 89/01041 actually teaches away from the present invention.

In view of the present amendment of Claim 1, the words "part or all" in Claim 5 have been amended to read "part", as the recited sequence is more than 30 amino acids long.

This amendment also cancels Claims 13 and 14.

Entry of the present amendment is hereby requested. These claim amendments are fairly based on the application as originally filed, as noted above, and thus do not introduce new matter into the application.

This Amendment and Request for Reconsideration constitutes the submission required under 37 C.F.R. §1.114 in connection with

a Request for Continued Examination. A check in the amount of \$750.00 in payment of the fee required in 37 C.F.R. §1.17(e), accompanies this submission.

An Information Disclosure Statement is being filed concurrently with this Amendment and Request for Reconsideration.

In view of the present amendments and the foregoing remarks, all of the claims now pending in this application are believed to be in condition for allowance. Accordingly, the issuance of a Notice of Allowance is believed to be in order, and such action is earnestly solicited.

Respectfully submitted,

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Enclosures: Information Disclosure Statement
Check for \$1,160.00 (\$410 Extension + \$750.00 RCE)